IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

Tr.P(Crl.).No. 39 of 2006()

[CC NO.555/2002 OF LEARNED CHIEF JUDICIAL MAGISTRATE, KASARAGOD]

PETITIONER: 1ST ACCUSED:

S. SURENDRA, S/O.LATE RAMA MOGERA,
AGED 40 YEARS, ACCOUNTS ASSISTANT,
S.K. MILK PRODUCERS UNION, KULSHEKARA,
MANGALORE-5, D.K. D.K. DISTRICT.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS: STATE/ACCUSED NO.2:

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1. ROHINI, D/O. LATE B.M. ISHWARA,
RESIDING NEAR RAILWAY GATE, HOSANGADI,
P.O. MANJESHWAR, KASARAGOD TALUK & DISTRICT.

2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

3. NARAYANA,
KARNATAKA FISHERIES DEVELOPMENT CORPORATION,
FISH MARKET UNIT, BUNDER, MANGALORE-I,
D.K. DISTRICT.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ
SRI.SREEPRAKASH K.NAIR

THIS TRANSFER PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 24/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Tr.P.(Crl.).No.39 of 2006

Dated this the 24th day of August 2007

O R D E R

The petitioner is the first accused in a prosecution for offences punishable under Section 417 I.P.C. The matter is pending before the learned Chief Judicial Magistrate, Kasargod. Proceedings were initiated as early as in 2002. The petitioner has come to this court with this petition complaining that the petitioner apprehends that he may not get justice at the hands of the learned Chief Judicial Magistrate. Why does he have that apprehension? The learned counsel for the petitioner submits that the learned Chief Judicial Magistrate is compelling the petitioner to pay an amount of Rs.30,000/- and settle the disputes. This suggestion by the learned Chief Judicial Magistrate has instilled in the mind of the petitioner a reasonable apprehension that he may not get justice at the hands of the learned Chief Judicial Magistrate. It is hence that this application for transfer is made. The respondent is served. There is no representation for the respondent today before me.

2. I have considered all the relevant inputs. The report of the learned Chief Judicial Magistrate was called for. In the report, the learned Chief Judicial Magistrate submits that there was an attempt to settle the disputes. Parties had agreed to settle the matter for an amount of Rs.30,000/-. There was no compulsion on the part of the learned Chief Judicial Magistrate to anyone to settle the dispute. It is for the parties to settle the disputes if they want. If they do not want to settle the dispute, they can go for trial. Then the matter will be decided by the court on the basis of the materials placed before court. Merely because, earlier the learned Chief Judicial Magistrate has accepted the suggestion of the counsel that the matter can be settled for Rs.30,000/-, it does not at all mean that the court will be prejudiced or will in anyway be influenced by any circumstances other than tangible and admissible data adduced before court. The learned Chief Judicial Magistrate, of course proceeded to assert that he has no objection in the case being transferred to any other court.

3. I have considered all the inputs. If there be reasonable apprehension of prejudice, a lenient view can

certainly be taken in favour of the petitioner who seeks transfer. But the apprehension has got to be reasonable. The apprehension cannot be pressed into service merely to delay the proceedings and get the case transferred from the Presiding Officer who has already taken up trial has proceeded half way. I am not at all satisfied that there is any reason to justify the prayer for transfer.

4. This petition is accordingly dismissed. There shall be a direction to the learned Chief Judicial Magistrate to dispose of the matter, as expeditiously as possible, at any rate, within a period of three months from the date on which a copy of this order is placed before the learned Chief Judicial Magistrate.

5. The registry shall communicate the order to the learned Chief Judicial Magistrate forthwith.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007